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**IN THE
COURT OF APPEALS OF INDIANA**

BOBBY WAYNE MILLER

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 76A05-0705-CR-255

APPEAL FROM THE STEUBEN CIRCUIT COURT

The Honorable Allen N. Wheat, Judge

Cause No. 76C01-0311-FB-1289

September 10, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Bobby Wayne Miller appeals the trial court's imposition of a fifteen-year executed sentence following his guilty plea for Dealing in Methamphetamine,¹ a Class B felony. We affirm.

FACTS AND PROCEEDURAL HISTORY

For the period of November 10 through 17, 2003, Miller and his wife lived in a room at a Budgeteer Hotel located in Steuben County, which Miller and accomplice Steven Hudson used as their headquarters for manufacturing and selling methamphetamine. On November 10, 2003, Miller, Hudson, and a third accomplice stole anhydrous ammonia from a farm supply site. The men took the ammonia and other supplies to the woods behind the hotel where Miller began producing methamphetamine. Miller needed to stay in the woods during the manufacturing process, so he and Hudson used walkie-talkies to communicate between the hotel room and the lab in the woods, with Hudson bringing additional supplies out to Miller as needed.

After Miller completed the manufacturing process, he and Hudson split the methamphetamine. Hudson sold some of the drug in exchange for items and precursors, which Miller used to manufacture additional methamphetamine. Miller used some of his portion of the drug and sold the rest. Miller produced methamphetamine four or five times during his stay at the Budgeteer Hotel. Miller later admitted that he had manufactured and sold methamphetamine for approximately one year.

¹ Ind. Code § 35-48-4-1(a)(1) (2003).

On November 19, 2003, Miller was charged with dealing in methamphetamine and with being a habitual offender. On March 12, 2007, Miller pled guilty to the offense of dealing in methamphetamine. In return, the State dismissed the habitual offender charge. The plea agreement stipulated that Miller's term of imprisonment shall not exceed fifteen years.

At sentencing, the trial court verbally issued a statement outlining its findings. The trial court found the mitigating circumstances to be the hardship imposed on Miller's family by his lengthy incarceration, remorse for his conduct, and Miller's guilty plea, but assigned each factor minimum weight. The trial court found Miller's lengthy criminal history, which includes at least five prior felony convictions, to be an aggravating factor.² After considering both the mitigating and aggravating factors, the trial court sentenced Miller to fifteen years, all executed, in the Department of Correction. Miller now appeals.

DISCUSSION AND DECISION

Miller argues that we should exercise the authority granted to this court by Appellate Rule 7(B) and revise his fifteen-year sentence, which he believes is inappropriate in light of the nature of his offense and his character. This court has the constitutional authority to revise a sentence pursuant to Appellate Rule 7(B) if we find that it is inappropriate in light of the nature of the offense and the character of the

² At the time of Miller's arrest in November of 2003, he had a substantial criminal history, including five prior felony convictions. Currently, Miller's criminal history in Indiana includes two juvenile adjudications, two misdemeanor convictions, seven felony convictions, and at least one ongoing case in LaGrange County, Indiana. Miller also has at least one conviction in Michigan for possession of methamphetamine.

offender; however, our review of any sentence is very deferential to the trial court's decision. Ind. Appellate Rule 7(B); *Martin v. State*, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003). If the sentence imposed is lawful, we will not reverse unless the sentence is inappropriate based on the character of the offender and the nature of the offense. *Boner v. State*, 796 N.E.2d 1249, 1254 (Ind. Ct. App. 2003). The burden lies with the defendant to persuade this court that his or her sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Miller contends that the nature of his offense, manufacturing and selling methamphetamine, does not justify the imposition of the fifteen year sentence, which was the maximum allowed in Miller's plea agreement. Miller argues that he did not have a large scale operation, but manufactured only enough methamphetamine to support himself and his addiction. We disagree. The facts show that Miller manufactured methamphetamine roughly five or six times during the week of November 10 through 17, 2003. Each time, Miller split the finished product with his accomplice, Hudson. Hudson would sell his portion and, with the proceeds, would buy the material needed to produce more methamphetamine. Likewise, Miller would use some of the methamphetamine and would sell the rest as a way to make money. Further, Miller admitted that he had been manufacturing and selling methamphetamine for roughly a year before being arrested.

Miller also contends that his sentence is inappropriate based on his character. Again, we disagree. Miller's character is that of a recidivist criminal who has yet to reform himself, as is evidenced by his numerous arrests, criminal convictions, probation

violations and periods of incarceration. Miller has a substantial criminal history that dates back to 1988 and consists of two juvenile adjudications, two misdemeanor convictions, and at least seven felony convictions, including convictions for sexual misconduct with a minor, burglary, criminal trespass, residential entry, receiving stolen property, possession of two or more precursors with the intent to manufacture methamphetamine, and possession of methamphetamine. Further, Miller has had his probation revoked on two prior occasions. A review of Miller's criminal history clearly suggests that Miller has had numerous opportunities to reform his behavior, but thus far has refused to do so. Therefore, Miller has failed to persuade us that his sentence was inappropriate and having concluded that the fifteen-year sentence was appropriate based on both the nature of the offense and the character of the offender, we now affirm the sentence imposed by the trial court.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.